

*ORAL ARGUMENT NOT YET SCHEDULED***IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

VINYL INSTITUTE INC.,	)	
	)	
Petitioner,	)	No. 22-1089
	)	
v.	)	
	)	
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	
_____	)	

**UNOPPOSED MOTION TO GOVERN**

Respondent, United States Environmental Protection Agency (“EPA”), respectfully submits this motion to govern and requests that the Court remove the case from abeyance and reschedule oral argument. Counsel for Petitioner, Vinyl Institute Inc., represents that Petitioner does not oppose the relief sought in this Motion. In support of this motion, EPA states as follows:

1. On May 23, 2022, the Vinyl Institute filed a Petition for Review (Doc. #1947770) pursuant to Toxic Substances Control Act (“TSCA”) Section 19(a), 15 U.S.C. § 2618(a), seeking review of EPA’s *Order Under Section 4(a)(2) of the Toxic Substances Control Act* (“Test Order”). Specifically, Petitioner challenges

EPA's authority to require one of the two tests required by the Test Order, the avian reproduction test. *See* Petitioner's Final Brief, Doc. #1998868 at 9.

2. As part of the avian reproduction test, adult birds are to be given food containing 1,1,2-trichlorethane prior to and after breeding. The effects of 1,1,2-trichlorethane on the adult birds, embryos, and hatchlings are monitored during the exposure period for impacts.

3. The matter is fully briefed and the Court previously scheduled oral argument for September 7, 2023. Doc #2004839.

4. On June 28th, 2023, Petitioner advised EPA of technical issues with the test, specifically that the feed was not maintaining stable concentrations of 1,1,2-trichloroethane, and expressed a legitimate concern to EPA that the test may be infeasible.

5. Thereafter EPA moved to hold the case in abeyance and stay oral argument while EPA evaluated the feasibility concerns.

6. The Court granted EPA's request and directed EPA to file a motion to govern further proceedings by October 10, 2023.

7. During the period of abeyance, preliminary testing on the recovery of 1,1,2-trichloroethane in the feed was conducted. The results of that testing showed that the feed maintained a suitable dose of 1,1,2-trichloroethane; EPA has notified Petitioner via email that the testing as required by Test Order should proceed.

WHEREFORE, Respondent requests that the Court remove this case from abeyance and reschedule oral argument.

Respectfully submitted,

TODD S. KIM  
Assistant Attorney General

DATED: October 10 , 2023

s/ Laura J. Brown  
LAURA J. BROWN  
U.S. Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 514-3376  
Laura.J.S.Brown@usdoj.gov  
*Counsel for EPA*

### **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Motion complies with the requirements of Fed. R. App. P. Rule 27(d)(2) because it contains 330 words according to Microsoft Word, and therefore is within the 5,200-word limit.

I also hereby certify that this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document was prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

DATED: October 10, 2023

Laura J. Brown  
Counsel for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion was today served electronically through the court's CM/ECF system on all registered counsel.

DATED: October 10, 2023

/s/ Laura J. Brown  
Counsel for Respondent